SPEECH

OF

HON. GEORGE S. BOUTWELL,

OF MASSACHUSETTS,

IN THE HOUSE OF REPRESENTATIVES, DECEMBER 5 AND 6, 1867.

The House having under consideration the following resolution, reported from the Committee on the Judiciary:

Resolved, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors—

Mr. BOUTWELL said:

Mr. SPEAKER: In opening this cause to the House I shall confine myself to a concise presentation of the views which the occasion imperatively demands at my hands, giving no rein whatever to those efforts and forms of speech which other men in similar circumstances have freely employed with great propriety and power.

The gravity of the occasion is unusual: leading us, as it ought, to exercise great care in speech and action, but not inducing us to swerve in any manner from the line of duty. It is one of the incidents of public life that public men are called to take responsibility; but it is one of the achievements of life to meet and bear successfully such responsibility when tendered by circumstances or events.

It is not strange that a sensitive, a conscientious public opinion shrinks from a proceeding so solemn in its character, the end of which man cannot foresee. In one scale they place all the present material and political interests of the country and in the other the project for the removal of a President who has fifteen months only of official life. If this were a full statement of the case, and there were no consequences of evil likely to follow, I certainly should not hesitate to yield to the suggestion which invites us to leave the President where he is. In the first place, the impeachment of the President does not involve any neglect of the questions and subjects to which the attention of the country is chiefly directed. In any event Congress will have time to deal with all these questions, and it will deal with them undoubtedly in a manner acceptable to the country. On the other hand, if the conclusion of the majority of the committee be correct, we are charged with a grave duty concerning the country in all its material and political interests during the present Administration, and furnishing an example affecting favorably or unfavorably its fortunes in all future time.

The public mind is influenced also by the vast powers and supposed evil character of the President; and the larger these powers are assumed to be so the more do the people dread a contest with a man whose capacity for wrong-doing even they have learned to respect. There is also a small class, but not an unimportant class, of the community who are attracted by the courage and persistency of the President's course. They have seen him carry on for two years a contest, apparently an unequal contest, with the legislative department of the Government in which there has been a two-thirds majority against him; but such has been his success that it is not strange that they now anticipate for him a speedy, decisive victory. And even his enemies must admit that he has exhibited talents and courage in a bad cause which would have rendered the truth triumphant in every part of the land.

Others have received the impression that the suspension of the President would follow his impeachment by this House. It certainly will not be out of place for me in this connection to present the views I entertain on this subject. After much deliberation I cannot doubt the soundness of the opinion that the President, even when impeached by this House, is still entitled to his office until he has been convicted by the Senate; and I have reached that conclusion in the presence of many difficulties which in my judgment are incident to the question.

I know it may be said that it is an extraordinary feature in the Government that the President of the United States, impeached by this House, and arraigned and on trial before the other, should still have command of the Army and the Navy and remain in possession of the vast emoluments, power, and patronage of office. There are grave difficulties in the way of this view. But if, on the other hand, it be the doctrine that the President of the United States is to be temporarily suspended from his office whenever the House of Representatives, by a majority of one, shall choose to prefer articles of impeachment against him, it is perfectly apparent that a mere majority might take out of the hands of the Executive, for any purpose that might seem to it fit, the power which by the people and under the Constitution had been confided to him. It

is worthy of notice, also, that the House having the management of the prosecution might prolong the trial for the purpose of controlling the Government. Therefore, after careful examination, I reach the conclusion that whatever may be the difficulty in the way of prosecuting the trial while the President remains actually in control of all the powers of the Government, it is a difficulty incident to the question, and a difficulty which we cannot remove.

I refer briefly to what seemed to me to be the duty of the committee; and in this connection I will also speak of what I understand to be the discretion of this House incident to its great authority under the Constitution, having in its hands the sole power of impeachment. The committee had no discretion. It was called by the order of the House under the Constitution to investigate the conduct of the President and to ascertain whether he had committed impeachable offenses. It was the duty of the committee to report its conclusion upon its conscience and best judgment. But in this House the jurisdiction is larger. This House has the sole power of impeachment. Its action is not subject to revision. Therefore it follows unquestionably that, in the exercise of its best judgment and conscience, it may give heed to the great rule of municipal and public life, that the law takes no notice of trifles. While the committee might feel compelled to bring here as a result of their investigation a conclusion based upon unimportant but technical violations of the laws of the land, amounting, in their judgment, to crimes and misdemeanors, it still would be in the power of the House to say that these matters are too unimportant to attract and engross the attention of that great tribunal, the Senate of the United States, acting in its highest character as a branch of the Government.

I also assume that this House may go still further. It may say, notwithstanding it shall appear from the record and from the evidence that the President is guilty of impeachable offenses of so high a character that under other circumstances it would be compelled to proceed to his trial and conviction, that the evil of attempting to correct them in the manner appointed by the Constitution is greater than submission to the continued evil of his administration. And this statement comprehends, I think, the entire powers of this House. It acts in its judgment upon the evidence first, but upon its conscience in its regard to public policy whether it will proceed or not. I very much doubt, however, the power of this House to censure the President as an independent proposition, though I cannot doubt its power to declare, if it choose so to do, that the President is guilty of impeachable high crimes and misdemeanors, but that upon considerations of public policy it is not for the present wise to prosecute those charges to trial and final judgment.

It was found by the investigation, as has been very fully set forth in the reports submitted to the House by the different branches of the committee, that this inquiry involves the determination of questions of law on which, in my judgment, the whole proceeding depends. If the theory of the law submitted by the minority of the committee be in the judgment of this House a true theory, then the majority have no case whatever. If, on the other hand, as I believe, the opinion entertained by the majority of the committee be a true view of the law, then I am unable to avoid the conclusion that the President is guilty of high crimes and misdemeanors, subjecting him to impeachment according to the authority of the Constitution. I have therefore felt it to be my first duty, if not my chief duty, in the discussion of this matter, to present to the House the view of the law entertained by the majority of the committee as fully, as carefully, but as concisely, as I am able to present it.

The attention of the committee was directed almost constantly to the nature and extent of the power of impeachment as it exists under the Constitution of the United States, and to the practice of the British Parliament from the earliest historical times to the commencement of the present century. The experience of Great Britain affords much instruction and something of warning in reference to proceedings by impeachment, but it does not furnish precedents which ought to control or in a large degree to influence the House of Representatives acting under the Constitution of the United States.

There are four provisions of the Constitution relating to impeachment, and I present them together for easier reference, and that the views I entertain may be more readily compared with the law upon the subject:

"The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment."—*Art. II, sec. 3, par. 5.*

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present."—*Art. II, sec. 3, par. 6.*

"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law."—*Art. II, sec. 3, par. 7.*

"The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."—*Art. II, sec. 4.*

It is apparent from these provisions that the power of impeachment is not vested in the two Houses of Congress for the purpose of punishing criminals, but for the sole purpose of removing from and rendering ineligible to office those persons who by their crimes or misdemeanors may be unfit for a particular public trust, or, in extreme cases, for any public trust whatever.

It is true that a judgment by which an officer who is charged with an act tainted with criminality is removed from office, and in some cases declared to be disqualified to hold and enjoy any office of honor, trust, or profit under the United States, is in its very nature a severe punishment; but that punishment is an inci-

dent of the proceeding and not its object. The object is to secure the country against the presence of the offender in any place of trust or power. If the judgment of the Senate be regarded as punishment, then the seventh paragraph of the third section of the first article of the Constitution, which provides that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law," would be wholly inconsistent with the nature of our institutions.

This phrase of the Constitution has been drawn aside, as I think, or rather torn from its legitimate connections and office for the purpose of furnishing a prop to the doctrine that those acts that are indictable, and those alone, are impeachable offenses.

The true and different meaning of this phrase is easily discovered. Its office was to change the common law practice of England. By that law a person convicted by the House of Lords upon a proceeding by impeachment could plead that conviction and sentence in bar of an indictment in a criminal court for the same offense. The reason of this is also apparent. The judgment of the lords carried a punishment with it entirely distinct from removal from office. Indeed in England removal from office was an incident or consequence of the proceeding, while its main object, as in ordinary criminal trials, was the punishment of the guilty party. Hence, when a man had been convicted and sentenced through the process of impeachment, and was subsequently arraigned in an ordinary criminal court, he put himself upon the common law maxim, incorporated substantially as an amendment to the Constitution of the United States, in these words:

"Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."—*Art. V of Amendments.*

The framers of the Constitution foresaw when they limited the sentence in cases of impeachment to removal from office and inability to hold office, that persons so convicted and sentenced, if afterwards arraigned upon an indictment would plead the judgment of the court of impeachment as a bar to the proceeding. Hence they employed affirmative and specific language controlling the English practice. This clause of the Constitution furnishes adequate support to the position I hold that impeachment is not in this country, as in England it is, a mode by which crimes are punished.

The proceedings, under the Constitution of the United States, for the impeachment of a public officer are essentially and fundamentally different from proceedings in cases of impeachment under the system of Great Britain; and this difference impairs materially, if it does not utterly destroy, the value of the English cases as authority in the United States. Under the English system the accused is subjected to trial in the House of Lords by processes analogous to those of an ordinary criminal court, with the singular and apparently unreasonable difference that he may be condemned by the voices of a majority merely of his triers, not less, perhaps, than twelve in number, while in a criminal court the accused cannot be sentenced and punishment inflicted unless the jury are unanimous in pronouncing him guilty.

Further, under the English system the House of Lords fixes the penalty, which may be death, imprisonment, loss of property, of office, or only the smallest fine in money. The accused can have no previous knowledge of the penalty to which his acts have exposed him. By the process of impeachment in England greater power is exercised by the House of Lords than is or can be exercised by the Senate of the United States and any criminal court, if the authority that each possesses is considered as vested in one body.

There are five manifest and important distinctions between the English and American systems in the nature and scope of the proceeding by impeachment:

1. In the United States the object is not the punishment of the offender, but security against his presence as a public officer.

2. In the United States the power of impeachment is limited to public officers; while in Great Britain a private citizen may be subjected to the proceeding.

3. In the United States the accused cannot be convicted without the concurrence of two thirds of the Senators present, while in England judgment follows if a majority of the lords present pronounce the accused guilty.

4. In the United States judgment cannot extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States, while in England the party convicted may be deprived of office, estate, and life at the will of a majority of his judges.

5. In England judges of the courts, since the time of William III, may be removed by the king upon an address by both houses of Parliament. This power does not exist under the Constitution of the United States.

In view of these manifest and important distinctions between the English and American systems the cases furnished by the practice of Great Britain possess but little importance as authority in America.

It follows naturally and necessarily from the distinctions stated that in this country a proceeding by impeachment is not a criminal proceeding. The absence of the party charged does not delay the trial. He cannot challenge the triers. Whoever is qualified as a Senator is thereby authorized to act as a judge. The Government is not bound to provide counsel or to pay the expenses of witnesses for the accused; nor can he avail himself of those technical rules relating to the verbiage of the charge established by law and usage in purely criminal proceedings, by whose aid the felon often passes from the dock or the prison and escapes the punishment due to his crimes.

An address to the throne would be resorted to in those cases where the matter for which the removal of a public officer is sought is free from color or taint of criminality. This power does not exist under the Constitution of the

United States; and inasmuch as its exercise depends necessarily upon the concurrence and action of the Executive it could not be resorted to for the removal of the Executive.

It is unnecessary, and consequently unwise, to anticipate the result should the House and Senate ever be called to consider the case of an imbecile or insane executive or judicial officer. Mr. Johnson is mentally competent for the performance of his official duty, and the only question is whether he has done acts that legally and technically are "high crimes and misdemeanors" in the sense in which those words are used in the Constitution. Recently, in a more formal manner than ever before, the position has been taken that civil officers, including the President and Vice President, are not liable to removal by impeachment unless proved guilty of acts that are declared to be indictable high crimes or misdemeanors by the written statute laws of the United States.

In the presence of the fact that this technical theory of the law is a shield, operating though not designed to protect Mr. Johnson from responsibility for acts which, as I believe, are high crimes and misdemeanors, according to the principles of the English parliamentary common law of crimes, I am led to make a full statement of my views of the constitutional powers of the two Houses of Congress for the removal of civil officers by the process of impeachment.

In entering upon this branch of the subject it is not out of place for me to state that when I speak of the English common law of crimes, or the criminal common law of England, I mean that law as it was administered by Parliament in cases of impeachment. This law was based upon the municipal criminal law, if it did not in all particulars correspond to it. Inasmuch as the process of impeachment under the English system was a criminal proceeding solely, and in that particular, as already shown, distinguished from the process by impeachment under our system, it naturally happened, as in the case of Lord Melville, that the lords declined to proceed when the law judges gave the opinion that the charges did not set forth an indictable offense.

It is also true that the principles of the English criminal courts in regard to the admission of testimony, the nature of the proof, and the rights of the accused, prevail in courts of impeachment in this country; and this rather from the necessity of the case than by virtue of the Constitution or by specific authority of law.

This practice shows how generally and thoroughly woven into our system of jurisprudence is the English common law, and how it is only by violent wrenching of the whole system that we escape from its control. We learn the meaning of the words "pardon," "reprieve," "jury," "bribery," "crime," "cruel and unusual punishments," "good behavior," "felony," "breach of the peace," and even of "impeachment," all words used in the Constitution, by reference to the English common law, and this, by the necessity of the case, sanctioned by the authority of the Supreme Court of the United States, and upon the ground that without such reference the Constitution would be inoperative and void; and yet when we propose to go to the same fountain of wisdom for the meaning of the words "high crimes and misdemeanors" we are told that these words are exceptions.

When, as is admitted, every other word used in the Constitution and known to the common law is interpreted by the common law, I ask for the authority, the constitutional authority, by which these words are made exceptions to this great rule, incident to our public life, sanctioned by the Constitution, and necessary to the existence of the Government? Is it to be found in the fact that these are general words and not specific? The minority of the committee, as I understand them, so assert and maintain. They admit that if following the words "treason" and "bribery" were the names of specific crimes, as arson, burglary, and murder, there would then remain no doubt that the commission of a crime so specified would constitute an impeachable offense. How does the case now differ? It would have been impossible to enumerate every crime and misdemeanor in the Constitution, yet those acts which by the English common law were "high crimes and misdemeanors" were perfectly well known. Blackstone in successive chapters has specified and named the acts which were "crimes and misdemeanors" under the general head of public wrongs. He has divided them into five principal classes, described the acts that were criminal, and given to each its name.

First, crimes against justice, among which are mentioned bribery, perjury, barratry, maintenance, champerty, and other crimes well known to the common law and the laws of all civilized countries as crimes against justice. Secondly, he enumerates under the head of "crimes and misdemeanors" "crimes against peace," such as riots, carrying weapons, challenges, &c. Thirdly, he mentions "crimes against trade," such as smuggling, owling, &c. Fourthly, "crimes against health," such as selling unwholesome provisions. Fifthly, "crimes against the police or the public economy of the State," as bigamy, polygamy, nuisances, &c. Can there be any doubt that when our ancestors went to the common law of England as it was laid down by Blackstone and selected treason and bribery as two great public political crimes, thus indicating the nature of the crimes which by the Constitution they intended to make impeachable, and drew from Blackstone, or even older authorities than Blackstone, the intelligible and well understood phrase, "other high crimes and misdemeanors," they intended to include those crimes which were as well known to the common law of England as were the crimes of treason and perjury?

Blackstone also divided crimes and misdemeanors into such as are more immediately injurious to God and His holy religion; such as violate or transgress the law of nations; such

as especially affect the king; such as more directly infringe the rights of the public or commonwealth taken in its collective capacity; such as in a peculiar manner affect or injure individuals. Under this last head he mentions "murder," "mayhem," "abduction," "rape," "kidnapping," "false imprisonment."

Every lawyer and statesman in England and America understood precisely what offenses were embraced by the phrase "high crimes and misdemeanors."

The division and enumeration made by Blackstone was familiar to every court in England and America, for the English common law prevailed in all the thirteen colonies. Moreover, in the last days of royal power in Massachusetts, its House of Representatives, upon the motion of John Adams, had impeached Chief Justice Oliver of "high crimes and misdemeanors." And yet we are now told that these solemn, majestic, omnipotent words of the common law were used by the lawyers, patriots, and statesmen of America in the most important part of the Constitution without any present meaning, destined to wait, and wait, for Congress to breathe into them the breath of life.

Nor can any enumeration in words meet all the cases of misdemeanor in office which would be the subject of impeachment, and Congress, after a struggle with difficulties which could not be mastered, would finally flee for refuge and security to some general phrase, and can any be suggested better than the comprehensive and well understood language employed by the framers of the Constitution?

Again, I say the view of the majority of the committee does not rest solely upon contemporaneous history or ancient authorities. The Supreme Court and the admissions of the minority of the committee fully sustain our position. The word "bribery" is not defined by the Constitution, and the minority admit what the Supreme Court with the clearest reason has declared, that for the definition of a common law word used, but not defined in the Constitution, we must refer to the common law and there ascertain its meaning. The chairman goes to the common law for the meaning of the word "bribery." The general and specific meaning of the words "high crimes and misdemeanors" was as well known to the common law as was the meaning of the word "bribery." The decision of the Supreme Court accepted by the minority of the committee refers us necessarily to the common law for the meaning of the words "high crimes and misdemeanors," and that meaning it must be admitted is not in any degree doubtful. Indeed "bribery," as we have seen from Blackstone's arrangement, is one of the crimes embraced under the head of crimes against justice in his classification of crimes and misdemeanors to which we are compelled to go to ascertain the meaning of the word "bribery," and wherein also we cannot avoid seeing the names and learning the nature of the other offenses included under the general phrase "high crimes and misdemeanors."

In pursuing this branch of inquiry I again refer to the provisions of the Constitution, already quoted, from which several distinct powers are derived:

1. The House of Representatives has "the sole power of impeachment." The word impeachment was known to the common law of England; and by the authority of the Supreme Court of the United States every common law word or phrase used in the Constitution is to be interpreted and defined by the rules and definitions of the English common law.

By that law the power of impeachment included inquiry, the presentation of articles of impeachment, and the prosecution of the case before the Senate to final judgment, and all this at the will of the House of Representatives.

2. The Senate has the sole power to try all impeachments, and the sixth paragraph of the third section of the second article makes provision in detail for the organization of the Senate as a special judicial tribunal.

3. The Constitution enumerates the persons who may be the subjects of impeachment, to wit: "the President, Vice President, and all civil officers of the United States," and by necessary implication excludes all other persons.

Thus does the Constitution create a court of impeachment, composed of a body charged with the duty of examination and prosecution, a tribunal to hear and decide with the jurisdiction as to persons prescribed and limited, leaving nothing whatever to future legislative discretion and action.

4. The Constitution specifies the acts which render the "President, Vice President, and all civil officers" liable to impeachment, to wit: "treason, bribery, or other high crimes and misdemeanors."

The open and remaining questions are: did these words have a specific and understood meaning when the Constitution was made, or did the men who framed it, the conventions and the people who ratified it, leave these words without meaning or force?

Is it not certain from the nature of the case, from the provisions adopted, from the language employed, that it was the design of the framers of the Constitution to create a tribunal with all the needful qualities and attributes of a court, including a statement of the extent and limits of its jurisdiction and authority in regard to persons and offenses, leaving nothing to legislative discretion and wisdom?

The meaning of the words "treason, bribery, high crimes, misdemeanors," as used in the common law of England and America, was then perfectly understood. The legal and general literature of both countries is replete with evidence in support of this statement. Could the framers of the Constitution have used these words without ascribing to them any meaning; and if any meaning was ascribed to them what meaning except that ascribed to them wherever the English language was spoken or English laws and customs prevailed? But the view I am maintaining is not dependent upon inference, reason, or contemporaneous history even,

for a careful consideration of the clause in question shows that legislative action would prove entirely impotent. Assume that it is not possible to impeach the President or any civil officer for any offense of which he may be guilty, unless such offense shall have been declared previously by a law of the United States to be an indictable high crime or misdemeanor. But will it be assumed further on the one hand that Congress may by law declare an act to be a misdemeanor which, according to the principles of the common law, contains no one element or quality of a crime, and upon the doing of the thing inhibited proceed to impeach and remove the President of the United States from his office?

The statement of the proposition furnishes its own refutation, and all just men must admit that in the presence of the provision of the Constitution now under consideration there is no power in Congress available for the purpose of laying a foundation for proceeding by impeachment to declare an act a crime which would not be so upon a judicial application of the principles of the English common law.

On the other hand, can Congress by law declare that acts which by the common judgment of mankind are crimes are relieved from all taint and impurity and that civil officers who may be guilty of those acts are free from responsibility? Can the constitutional powers of a court established under the Constitution, and for the highest purposes known to it, be thus annulled by an act of Congress and the court itself rendered utterly incapable of performing its only function, and that function essential to the existence of the Government? Is it possible in the nature of the case that the Fortieth Congress by law may limit and control the House or Senate of a succeeding Congress in the discharge of duties imposed upon them by the Constitution? Is it not, then, true, if the power to legislate on the subject be admitted, that Congress from the necessity of the case can neither enlarge nor limit the meaning or scope of the words used in the Constitution?

Honest and constitutional legislation would present the subject finally as it now appears in the Constitution itself. Those acts, and those only, would be "high crimes" which are so according to the principles of the English parliamentary common law of crimes; and those acts would still be "misdemeanors" which are so by virtue of the same principles. Thus, upon an analysis of the subject, are we compelled to fall back upon the phraseology and substance of the constitutional provision we are considering; and most certainly we should be compelled by experience to fall back upon its substance and phraseology if legislative action were undertaken.

In continuing the analysis we see yet more clearly how futile and dangerous all attempts to legislate upon this subject will in the end prove. Treason is one of the offenses for which civil officers are liable to impeachment. This crime is defined by the Constitution, and will it be contended that it is in the power of Congress to enlarge, limit, or in any degree to qualify the jurisdiction of the Senate when sitting as a court for the trial of the President or other officer charged with that crime?

If it be said that the circumstance that this crime is defined in the Constitution has deprived Congress of the power to legislate upon this branch of the subject, and that its authority is therefore limited to "bribery and other high crimes and misdemeanors," it may be stated in answer that the Constitution did not create the crime of treason, but simply limited the definition of the crime to a single offense; while by the common law of England it included several distinct offenses. It should be observed, however, that by the English law every form of treason was a crime or misdemeanor, and while by the Constitution of the United States only one of these forms is declared to be treason the other acts still rest in the class of crimes and misdemeanors.

Bribery was an offense as well known to and as well defined by the common law of England at the time the Constitution was framed as was the crime of treason. The phrase "high crimes and misdemeanors" had been in use in the courts and in the books of England for centuries.

Legislative wisdom is and ever must be incapable of rendering the meaning of these words more certain than it is when subjected to the principles which lie at the foundation of the English common law. The Constitution makes the President and all civil officers liable to impeachment if guilty of bribery; is it to be assumed that this power in the Constitution was to remain dormant until Congress by law should declare what bribery is, and what acts are acts of bribery; and also provide that bribery as defined by law shall be an indictable offense? If it had happened, for example, that an aspirant for the Presidency at the organization of the Government had bribed a sufficient number of electors to secure his own election and to defeat the choice of the people, would the country have been compelled to submit to the administration of such a man for four years, or would the House of Representatives and Senate have proceeded under the authority conferred by the Constitution to impeach, to try, and remove him from office? And be it remembered that although bribery is named in the Constitution it was not, when the Government was organized in 1789, an indictable offense, which the minority of the committee say it must be before it can be impeachable. The Government was in existence from the 4th day of March, 1789, to the 30th day of April, 1790, before a crimes act was passed, and during that time neither treason nor bribery was indictable by law in any court of the United States. Will anybody say in view of this provision of the Constitution that our fathers would have sat silently and submitted to the administration of a man who was elected by bribery, but whose offense was by no law of the land indictable?

Still further, it is constitutionally impossible for Congress to declare that certain offenses

are crimes and misdemeanors everywhere and under all circumstances within the territory of the United States. For example, the power of Congress to provide for the punishment of the crime of murder is limited to the forts and arsenals, to the District of Columbia, and to the Territories of the Union. Upon the theory that those offenses only are impeachable which are made crimes by the laws of the United States a civil officer might be guilty of murder within the jurisdiction of a State where the crime is not and cannot be punishable by any law of Congress, and the House and Senate would have no power to arraign, try, and remove him from office. Practically it would be found impossible to anticipate by specific legislation all cases of misconduct which will occur in the career of criminal men. At the present moment we have no law which declares that it shall be a high crime or misdemeanor for the President to decline to recognize the Congress of the United States, and yet should he deny its lawful and constitutional existence and authority, and thus virtually dissolve the Government, would the House and Senate be impotent and unable to proceed by process of impeachment to secure his removal from office?

The theory I am combating is virtually the end of the Government. It offers substantially free license to executive and judicial officers. Legislative wisdom has not yet attempted to declare by statutory provisions what acts executive and judicial officers may not lawfully do, but when such wisdom shall have been exercised for a century and exhausted the President of the United States may examine and avoid all statutes of restraint or inhibition, and then fearlessly and successfully usurp power, oppress the people, encourage discord, promote rebellion, corrupt public officers, humiliate and disgrace the nation by multitudinous acts of wrong, and there will be neither redress nor relief. The theory that we must look to the statutes of the United States alone, and that the President and other officers, as long as they do not violate the criminal statute laws of the country, may do any act or thing, however detrimental to the public interests, however contrary to the public morals, however heinous in its nature, and still retain their offices, is a theory so at variance with civilization, with the principles of law, and with the existence of the Government, that it ought not to receive our support or countenance unless the language of the Constitution imperatively requires us to yield to its authority.

The history of the Government shows conclusively that this theory was not entertained by its founders. The men who framed the Constitution were for a quarter of a century in the Government of the country, and they never took one step or suggested that one step should be taken for the purpose of rendering the power of impeachment of practical value if it be true that no act, however base, dangerous, or criminal, is a crime or misdemeanor in the contemplation of the Constitution unless it has been previously so declared by an act of Congress and made an indictable offense. The omission upon their part to legislate upon the subject, with the knowledge they had as to the meaning of the Constitution, would have been criminal in character if they entertained the opinion that legislation was necessary in order to render the power of removal by impeachment of any practical value for the preservation of the liberties of the country.

I now call the attention of the House to the opinion of the Supreme Court given in 1812 touching the jurisdiction of the courts of the United States, in which they held that the courts have no common-law criminal jurisdiction, and that such jurisdiction cannot be taken unless authorized by an act of Congress. The opinion was given in a case which was not fully argued, and it was not the unanimous opinion of the court. But I have no occasion to question its soundness. The courts of the United States under the Constitution have no common-law criminal jurisdiction, and for the reason that the Constitution has not conferred it upon them. The Senate of the United States, as I maintain, as a high court of impeachment, has the power to deprive the President or any civil officer of his office who has been guilty of treason, bribery, or other high crime or misdemeanor, because the Constitution has conferred this power upon the Senate. The Supreme Court in the case referred to held that the law must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense. All these conditions are satisfied in the provisions of the Constitution by which the Senate is constituted a tribunal with the sole power to try impeachments. The officers liable to impeachment and the offenses rendering them so liable are distinctly specified.

Is it not reasonably certain that if the words "bribery or other high crimes and misdemeanors" were not to be interpreted by the rule of the common law their meaning would have been limited in the Constitution itself, as was done in the case of treason, or that specific authority would have been given to Congress to act on the subject? The simple addition to the phrase "high crimes and misdemeanors" of the words "as may by law be prescribed" would have settled the question in favor of the theory which gives to Congress authority to change the powers of the Senate as a court of impeachment according to its own changing opinions.

I rest firmly in the conclusion that the phrase "bribery or other high crimes and misdemeanors" is used in the Constitution in accordance with and subject to the rule of reason, which lies at the foundation of the English common law. This rule is that no person in office shall do an act *contra bonos mores*, contrary to good morals; and subjecting the provisions of the Constitution concerning impeachment to that rule the result is that neither the President, the Vice President, nor any civil officer of the United States can lawfully do any act, either official or otherwise, which in a large, a public sense is contrary to the good morals of

the office he holds. Misconduct in office, misbehavior in office, misdemeanor in office, are equivalent terms. It follows also that the scope of the rule of the common law is not to be ascertained by reference to cases which have arisen either in Great Britain or in the States of the United States where the English common law of crimes exist, however numerous such cases may be. The principle of the English common law furnishes not only the foundation for the cases which have arisen, but for others that may arise and to which the same great principles of law must be applied.

This principle has been elucidated by the most eminent writers of England and of this country, and it is especially recognized, applied, and elaborated by one of the great jurists of modern times. I refer to Chief Justice Shaw, of the supreme court of Massachusetts.

By the Constitution this House may determine the rule of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds expel a member. But are we to sit here without authority to protect ourselves until those acts which amount to disorderly behavior are enumerated in the laws of the country or by the rules of the House? Our security is first in the reason and conscience with which we are individually guided and warned; and then in the reason and conscience of our judges applied in the light of the principle which lies at the foundation of the common law, municipal, public, and parliamentary. Upon the view of the Constitution which I present and maintain honest public officers are safe in all their rights. In the nature of the case, a civil officer, guided by his conscience and judgment, will do no act which the Senate of the United States upon its conscience and judgment, and by a two-thirds majority of the members present, will pronounce a high crime and misdemeanor. On the other hand, the theory that I aim to refute seems to me to be fraught with danger to civil officers and with peril to the Government.

With this view of the law I turn now to the authorities, and then I shall pass briefly over the precedents which the history of this country furnishes. The great authority upon impeachment, whose writings are, indeed, the result of all English experience, all English law, and all English learning upon the subject, is that of Wooddeson, who was the first English law writer, as far as I know, who treated the subject of impeachment upon broad, general grounds of public policy. A part of the extract which I now read has been furnished, I believe, in both the majority and minority reports of the committee, but I enlarge the quotation as stating more fully the ground upon which I stand in the opinions I entertain upon this question. He says:

"All the king's subjects are impeachable in Parliament, but with this distinction: that a peer may be so accused before his peers of any crime, a commoner (though perhaps it was formerly otherwise) can now be charged with misdemeanors only, not with any capital offense. For when Fitzharris, in the year 1681, was impeached of high treason, the lords remitted the prosecution to the inferior court, though it greatly exasperated the accusers. Such kind of misdeeds, however, as peculiarly injure the Commonwealth by the abuse of high offices of trust are the most proper and have been the most usual ground for this kind of prosecution.

"Thus, if a lord chancellor be guilty of bribery or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision.

"So where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an embassador to betray his trust, a privy councilor to propound or support dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments—these imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses, or to investigate and reform the general polity of the State."—*Wooddeson's Lectures*, edition of 1792, Dublin, vol. 2, lecture 40.

In accordance with this learned and clear opinion of the great commentator upon the English law are the authorities on this side of the Atlantic, beginning with Hamilton, who in the sixty-fifth number of the Federalist says, speaking of the power of the Senate in the matter of impeachment:

"The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."—*Federalist*, No. 65.

Nathan Dane, in his Digest of American Law, says:

"Judge Chase in his defense under the first article of impeachment contended that no civil officer of the United States can be impeached except for some offense for which he may be indicted at law; and that no evidence can be received on an impeachment except such as on an indictment at law for the same offense would be admissible. This ground taken by the respondent occupied a large portion of the arguments on both sides; but his counsel did not insist on this ground, and most clearly it was not tenable. It was agreed on all hands that he was charged with misdemeanor in office; that a misdemeanor in office and misbehavior in office mean the same thing."

* * * * * * * * * * *

"Suppose the President of the United States were to attempt to influence the votes of members of Congress upon a particular question, and should promise them offices, he would be impeachable clearly, but surely not indictable." * * * * * *

"Now, what is good behavior in office is certainly a very general and indefinite question, not defined by statute, Constitution, or adjudged cases, nor can it be in the nature of things; but what is good behavior or not in office must ever essentially depend on the actions of the officer and circumstances of the particular case, too numerous and various to be reduced within any known in the proper sense of the expression."—*Chap. 222, articles 8 and 9.*

It follows from these authorities that those acts are especially impeachable offenses which affect the welfare or existence of the State, or render the officer unfit for the discharge of his duties. It does not follow that every act which is a crime at law is therefore impeachable, or that impeachable offenses are indictable.

Chief Justice Story says, in his various paragraphs on this subject:

"However much it may fall within the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute-book of the Union as impeachable high crimes and misdemeanors."

Again:

"It seems to be the settled doctrine of the high court of impeachment that, though the common law cannot be the foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not 'high crimes and misdemeanors' is to be ascertained by a recurrence to that great basis of American jurisprudence."

And he adds to this that—

"The power of the House to punish contempts, which are breaches of privilege not defined by positive law, has been upheld on the same ground; for if the House had no jurisdiction to punish until the acts had been previously ascertained and defined by positive law, it is clear that the process of arrest would be illegal."—*Vol. 2, sec. 797.*

Again he says:

"The offenses to which the power of impeachment has been and is ordinarily applied as a remedy are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power, but that it has a more enlarged operation, and reaches what are aptly termed political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests in the discharge of the duties of political office. These are so various in their character and so indefinable in their actual involutions that it is almost impossible to provide for them by positive law. They must be examined on very broad and comprehensive principles of policy and duty."—*Vol. 2, sec. 764.*

If this concise and clear paragraph illustrating the law of impeachment had been written in view of the facts which we are now called to consider, it would not have more clearly set forth in its general language the offenses of which the majority of the committee complain.

Again he says:

"Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct." * * * * "In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon statutable misdemeanors."—*Sec. 799.*

That was the opinion of Mr. Justice Story, writing about the year 1830, when the cases of Blount, of Chase, and of Pickering were before him and known to him. He says that no one of the cases of impeachment which had then been tried rested upon statutable misdemeanors.

I here close, Mr. Speaker, the authorities, and turn to the cases which the history of this country has furnished for the purpose of sustaining by a distinct reference thereto the doctrine which Judge Story maintained, and which is set forth in the report of the majority of the committee.

The first case is that of William Blount, a Senator from the State of Tennessee in the Congress of the United States. He was impeached by the House of Representatives upon the ground that he had excited the Indians of the Southwest against the Government of the United States, or at least to ally themselves through the agency of other persons with foreign Powers in such a way as to promote a rupture with Spain. The charges against him rested entirely, or almost entirely, upon a letter written by himself and upon the testimony of a person who was in a certain sense his confidant and agent; but I believe upon a careful examination of the whole of the testimony it amounts to this only, that there was probable cause to believe that he had some purpose to alienate the Indians of the Southwest from the Government of the United States, and indirectly to interfere with the neutrality laws of 1794. But however that may be, whoever reads the charges made by the House of Representatives will be satisfied that they did not set forth an indictable offense under any law of the United States. What did the House of Representatives do? It impeached William Blount of high crimes and misdemeanors on the 3d day of July, 1797. The Senate, upon the question of law being raised whether a Senator was in such a sense a civil officer as to be liable to the process of impeachment, held that he was not a civil officer, and therefore the case was disposed of upon a point of law.

But what did the Senate do? By a vote of twenty-five to one they expelled William Blount from the Senate, and in the resolution of expulsion it was expressly declared that he had been guilty of a high misdemeanor. Therefore in the case of William Blount we have the judgment of the House of Representatives of 1797 and the judgment of the Senate of 1797 that an offense which, as set forth in the charges preferred by the House, was not an indictable offense, was nevertheless a high misdemeanor. Judge Story, in commenting upon the action of the Senate, says:

"It may be supposed that the first charge in the article of impeachment against William Blount was a statutable offense, but on an accurate examination of the act of 1794 it will be found not to have been so."

The next case is that of Judge Chase, an associate justice of the Supreme Court of the United States, a signer of the Declaration of Independence, a member of the Convention that framed the Constitution of the United States, a learned lawyer, present, making his answer and managing his own cause before the Senate. Upon the eighth article there were nineteen votes in the Senate for conviction and fifteen for acquittal. He had been impeached by the House of Representatives for high crimes and misdemeanors. By a majority of the Senate, but not by the requisite two thirds majority, it was declared that under the eighth article he was guilty of high crimes and misdemeanors. What is set up in the eighth article? If the House will bear with me I think it would be not uninstructive to listen to the concise statement of the grounds on which the House of Representatives, in 1804, proceeded to carry the case of Judge Chase before the Senate of the United States.

The eighth article is in these words:

"And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at the circuit court for the district of Maryland, held at Baltimore in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters

coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretense of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland against the Government of the United States by delivering opinions which, even if the judiciary were competent to their expression, on a suitable occasion and in a proper manner, were, at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan."

That was the eighth of the articles preferred in 1804 by the House of Representatives of the United States against a justice of the Supreme Court of the United States, and he did not, upon the record, venture to risk his case upon the question of law. He took the judgment of the Senate upon the whole question, the law and the fact combined; and by a vote of four only escaped conviction of high crimes and misdemeanors upon the article, which I have now read, from the first to the last words thereof.

The next case was that of Judge Pickering, of New Hampshire. I will read the fourth of the articles upon which he was convicted. I will say here, what perhaps I might have said elsewhere, that we stand, not upon the doctrine that indictable offenses by the statutes of the United States are not under some circumstances and when of a certain character impeachable, but if we find in the proceedings of our ancestors that on any occasion in any array of articles against an offender there is a single article which does not set forth an indictable offense, and the party was convicted upon that article, it sustains our position as fully as though none of the articles set forth an indictable offense. Therefore it is with great confidence that I call the attention of the House to this particular article against Judge Pickering, which does not contain an indictable offense under the laws of the United States. I suppose it would be difficult to frame a statute of the United States which would make the substance of this charge an indictable offense. The fourth article upon which Judge Pickering was tried and convicted is as follows:

"That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the 11th and 12th days of November, in the year 1802, being then judge of the district court in and for the district of New Hampshire, did appear upon the bench of the said court for the purpose of administering justice in a state of total intoxication, produced by the free and intemperate use of inebriating liquors; and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States, and was then and there guilty of other high misdemeanors disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States."

These were the ideas which our ancestors entertained of the character of a public officer. They felt that the dignity of the nation required that a judge should be clear in his high office. Upon that article, containing no one element of an indictable offense by any law of the United States then existing, he was found guilty and removed from his office.

Before passing from the case of Judge Pickering I desire to call attention to a view taken of his trial by the minority of the committee. Upon the question "guilty" or "not guilty" of the charges set out in the fourth article the yeas were 19 and the nays 7. It is stated substantially in the report of the minority (I do not profess to quote the exact words) that the finding was, in a certain sense, a political and partisan judgment. It may be true that the men who voted for the conviction of Judge Pickering were of one party; but I think the record shows that it was not by one party that he was removed from office. Five Senators, members of the court, refused to vote. If those five had voted in the negative Judge Pickering would have been acquitted. Why did those five gentlemen refuse to vote? The record shows. The son of Judge Pickering sent a memorial to the President of the Senate, setting forth that his father was then insane; that he was insane when he exhibited himself intoxicated upon the bench; that for two years previous to that time he had been insane; and that therefore he was not responsible for what he had done.

It is important for the House to see how these five men, who had it in their power to save Judge Pickering from conviction by the Senate, to save his reputation, acted on that occasion. Senators Armstrong, Bradley, Stone, Dayton, and White retired from the court, and the record shows that the two last, Dayton and White, did this, not because they believed Judge Pickering guilty of high crimes and misdemeanors, (leaving it to be inferred that Armstrong, Bradley, and Stone did believe him guilty of high crimes and misdemeanors,) but because they did not choose to be compelled to give so solemn a vote upon a form of question which they considered unfair and calculated to preclude them from giving any distinct and explicit opinion upon the true and most important point in the case, namely, as to the insanity of Judge Pickering, and whether the charges contained in the articles of impeachment, if true, amounted in him—*in him*—to high crimes and misdemeanors; thereby upon the record admitting that if the question of insanity had not been raised there would have been no doubt as to the crimes and misdemeanors charged as high crimes and misdemeanors. Senator Dayton, one of the Senators who retired, said:

"They were simply to be allowed to vote whether Judge Pickering was guilty as charged—that is, guilty of the facts charged in each article—aye or no. If voted guilty of the facts, the sentence was to follow, without any previous question whether those facts amounted to a high crime or misdemeanor. The latent reason of this course was too obvious. There were members who were disposed to give sentence of removal against this unhappy judge upon the ground of the facts alleged and proved, who could not, how-

ever, conscientiously vote that they amounted to high crimes and misdemeanors, especially when committed by a man proved at the very time to be insane, and to have been so ever since, even to the present moment."

It therefore is clear, I think, from the action of the court in the case of Judge Pickering, that there was really no substantial difference of opinion upon the main question in which we are now concerned, which is, not whether Judge Pickering was insane, but whether the fourth article, one of the articles on which he was convicted, set forth impeachable high crimes and misdemeanors. Therefore, notwithstanding there may have been an irregularity, an informality, even an impropriety in the character of the question put to the court, it still remains true that upon the record a majority of more than two thirds of that court believed that the fourth article charged the respondent with impeachable high crimes and misdemeanors.

I come now to the last case—a very recent one—the case of Judge Humphreys, who in the year 1861 was removed from his office as judge of the district court of Tennessee. Judge Humphreys was convicted upon each of the seven articles which were presented before the Senate, with the exception of a portion of one of the specifications under one of the articles. The first article on which he was convicted (and we are compelled to assume that if it had been the only article he would have been convicted and removed from office) does not—and I speak with great confidence—set forth an indictable offense. Trespassing as I know I do upon the patience of the House, I still think that the view of the case I am presenting would be incomplete if I did not read that article in full to the House that I may have its judgment upon the question whether or not the offense set forth is indictable.

The first article was in these words:

"That, regardless of his duties as a citizen of the United States, and unmindful of the duties of his said office, and in violation of the sacred obligation of his official oath, 'to administer justice without respect to persons,' 'and faithfully and impartially discharge all the duties incumbent upon him as judge of the district court of the United States for the several districts of the State of Tennessee, agreeable to the Constitution and laws of the United States,' the said West H. Humphreys, on the 29th day of December, A. D. 1860, in the city of Nashville, in said State, the said West H. Humphreys then being a citizen of the United States, and owing allegiance thereto, and then and there being judge of the district court of the United States for the several districts of said State, at a public meeting on the day and year last aforesaid, held in said city of Nashville, and in the hearing of divers persons then there present, did endeavor by public speech to incite revolt and rebellion within said State against the Constitution and Government of the United States, and did then and there publicly declare that it was the right of the people of said State, by an ordinance of secession, to absolve themselves from all allegiance to the Government of the United States, the Constitution and laws thereof."

The offense with which Humphreys is charged in this article was committed on the 29th day of December, 1860, before the fall of Sumter, and when only one or two States had passed an ordinance of secession. The declaration was merely a declaration in a public speech that the State of Tennessee had the right to secede. That the article sets forth an impeachable offense I do not doubt; but no lawyer will maintain that Judge Humphreys could have been indicted for treason or for any other crime under the laws of the United States for what in this article is alleged as having been said by him, or for what he did say, or, in fine, for anything that he could have said in a public speech at Nashville at that time. Yet the House and the Senate of 1861 found that this article set forth "impeachable high crimes and misdemeanors" under the Constitution of the United States, and by a two-thirds majority of the Senate he was convicted and removed from office.

Mr. Speaker, my discussion of the law is ended. The view that I have attempted to maintain, however imperfectly presented, is strong in the principles of American jurisprudence. Those principles are derived from the English common law, and by the letter and spirit of the Constitution are transferred to and made a part of our system of public policy.

We stand firmly upon the authorities on this side of the Atlantic and on the other. We follow the practice of our ancestors, the men who framed the Constitution, and who may be presumed to have known their own intention, and to have been able to express that intention in appropriate words.

I turn now to the facts of the case. If the position I have taken is sound, that the meaning of the phrase "high crimes and misdemeanors" is to be ascertained by reference to the principles of the English common law of crimes, Blackstone's definition, "that a crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it" becomes important. I stand upon this definition of the great writer upon English law as the connecting link between the theory of the law that I maintain and the facts which in this case are proved.

It is to be observed in connection with Blackstone's definition that in our system the Constitution and the statutes are the "public law" of which he speaks, and any act done by the President which is forbidden by the law or by the Constitution, or the omission by him to do what is by the law or the Constitution commanded, is a "high crime and misdemeanor," and renders him liable to impeachment and removal from office.

He is amenable to the House and the Senate in accordance with the great principles of public law of which the Constitution of the United States is the foundation. And it is true in a higher and better sense than it is true of the statutes that the President of the United States is bound to support the Constitution, the vital part of which, in reference to the public affairs of the country, is that he shall take care that the laws be faithfully executed, and he violates that great provision of the Constitution especially when he himself disregards the law either by doing that which is forbidden or neglecting that which he is commanded to do.

Sir, in approaching the discussion of the

transactions of which we complain I labor under great difficulties, such as are incident to the case. The President has in his hands the immense patronage of the Government. Its influence is all-pervading. The country was disappointed, no doubt, in the report of the committee, and very likely this House participated in the disappointment, that there was no specific, heinous, novel offense charged upon and proved against the President of the United States. It is in the very nature of the case that no such heinous offense could be proved. If we understand the teachings of the successive acts which are developed in the voluminous report of the testimony, and if we understand the facts which are there developed, they all point to one conclusion, and that is that the offense with which the President is charged, and of which I believe by history he will ultimately be convicted, is that he used as he had the opportunity, and misused as necessity and circumstances dictated, the great powers of the nation with which he was intrusted, for the purpose of reconstructing this Government in the interest of the rebellion, so that henceforth this Union, in its legitimate connection, in its relations, in its powers, in its historical character, should be merely the continuation of the Government which was organized at Montgomery and transferred to Richmond.

If, sir, this statement unfolds the nature of the case, there would not be found any particular specific act which would disclose the whole of the transaction. It was only by a series of acts, by a succession of events, by participation direct or indirect in numerous transactions, some of them open and some of them secret, that this great scheme was carried on and far on towards its final consummation. Hence it happens that when we present a particular charge it is one which for a long time has been before the public. The country has heard of it again and again. Men do not see in that particular offense any great enormity. Then we are told that this particular act was advised by this Cabinet officer, and that act assented to by another Cabinet officer. This matter was discussed in Cabinet meeting, the other was considered in a side chamber, and therefore the President is not alone responsible for anything that has been done. But, sir, I assert that whoever else may be responsible with him, he is responsible for himself. Any other theory is destructive to public liberty. We understand the relations which subsisted between the President and his Cabinet officers. The tenure-of-office act gave the latter a degree of independence. But whatever were the subsisting relations the President cannot shield himself by their counsel, and claim immunity for open, known, and willful violations of the laws of the land. I do not speak now of errors of judgment, but of open and avowed illegal acts personally done or authorized by himself. But he has not always had even the countenance of his Cabinet officers. The test-oath was suspended by the President against the opinion of Attorney General Speed. If Cabinet officers have been concerned in these illegal transactions I have for them, to a large extent, the same excuse that I have for myself, the same that I have for the members of this House and for the people of this country. In the beginning they did not understand the President's character, capacity, and purposes.

His capacity has not been comprehended by the country. Violent sometimes in language, indiscreet in manner, impulsive in action, unwise often in declamation, he is still animated by a persistency of purpose which never yields under any circumstances, but seeks by means covert and tortuous as well as open and direct the accomplishment of the purpose of his life.

I care not to go into an examination—indeed, I have neither the time nor the taste for it now—of the tortuous ways by which he has controlled men who in the public estimation are superior to himself. But my excuse for Cabinet officers, for members of Congress, for the country, is that in 1865, when he issued his proclamation for the reorganization of North Carolina, no one understood him. General Grant in his testimony says that he considered the plan temporary, to be approved or annulled when Congress should meet in December. But when Congress assembled the President told us that the work was ended; that the rebellious States were restored to the Union. He then planted himself firmly upon the proposition laid down in his North Carolina proclamation in defiance of the Constitution; in defiance of the decision of the Supreme Court of the United States that the power was in Congress to decide whether the government of a State was republican or not; in defiance of the cardinal principle of the sovereignity of the people through Congress. He ratified substantially in his message that which he had assumed merely in the proclamation of the 29th of May, that he was the United States for the purpose of deciding whether the government of a State was republican or not.

Sir, if this whole case rested merely upon that assumption, that exercise of power, I maintain that it would bring him specifically and exactly within the control of this House, for the purpose of arraigning him before the Senate upon the charge of seizing and usurping the greatest power of the legislative department of the Government, unless it be that of taxation, which he has also usurped and exercised in defiance of the Constitution. But even then the nature of the proceeding was not fully understood, and his motives were only partially disclosed. The public mind did not comprehend the character and extent of the usurpation.

Thus it was that his motive was concealed. He was not understood, and the charity of the country silenced suspicions of evil. But he moved on step by step. The country in the mean while was under the influence of his bold declarations, made frequently from the 14th of April to about the 1st of July, 1865; declarations which, even in the coldest of us, made the blood kindle in our veins, as he set forth the punishment to which the rebels were entitled.

Even the most violent of the northern people, they who had suffered from the war, those who had offered their sons, their brothers, and their husbands in sacrifice for the Republic, shuddered when they listened to his declamation as to the power and duty of this Government to punish those who had been engaged in the rebellion. But from July, 1865, his conduct and his policy have been entirely opposed to the declarations made in the spring and early summer of that year. I see in those declarations only this: that they were designed and intended, when they were uttered, to conceal from the public the great purpose he had in view, which was to wrest this Government from the power of the loyal people of the North and turn it over to the tender mercies of those who had brought upon the country all the horrors of civil war.

I pass, sir, to the testimony of Judge Mathews, of Ohio, a person whom I never saw but once, and of whom I know nothing except what the record discloses. He was an officer of the northern Army, and he has been a judge of some of the courts in Cincinnati or vicinity. He says that in the month of February, 1865, when Mr. Johnson was passing from Tennessee to Washington to take the oath of office as Vice President, he called upon him at the Burnett House. The conversation was apparently unimportant, but it discloses a purpose on the part of Mr. Johnson. He said to Judge Mathews, "You and I were old Democrats." "Yes," replied Judge Mathews. Says Mr. Johnson, "I will tell you what it is: if the country is ever to be saved it is to be done through the old Democratic party." That was in February, 1865. He had then received the suffrages of a free and generous people. They had taken him from Tennessee, where he would have had no abiding place but for the armies of the Republic that protected him in his person and property. He was then entering upon the second office in the gift of the people, chosen by the great party of power and of progress in the country, which had saved the Union in its days of peril. No act had been by them done which could possibly have alienated him from them. Jefferson Davis was still at Richmond. The armies of Lee menaced the capital of his country. Andrew Johnson was approaching that capital for the purpose of taking the oath of office. That capital was merely a fortified garrison. He then declares that the country cannot be saved except by the old Democratic party.

What was the old Democratic party? It was the party of the South; it was made up of those men in the southern country who entered into the rebellion. That casual expression dropped at the Burnett House in Cincinnati in February, 1865, discloses his mysterious course from that day to this. I do not speak now of those Democrats of the North who stood by the flag of the country, who maintained the cause of the Union, but I speak of that old Democratic party of which he spoke, whose inspiring principle was devotion to slavery, hatred to republican institutions and the cause of the Union and of liberty. It was to them that Mr. Johnson, in February, 1865, turned his eyes for the salvation of the country. He was then Vice President only, but his career as President illustrates his devotion to the purpose he then entertained.

I come now to a brief statement of those acts of the President which disclose his motives and establish his guilt. First he and his friends sedulously promulgated the idea that what he did in the year 1865 was temporary.

Then came his message of December, 1865, which disclosed more fully his ulterior purpose.

Then came the speech of February 22, 1866, in which he arraigned the Congress of the United States collectively and individually, and, as I believe, made use of expressions which uttered by a sovereign of Great Britain in reference to Parliament and to individual members of Parliament would have led to most serious consequences, if not to the overthrow of the Government.

Then came his vetoes of the various reconstruction measures. I know very well that it will be said that the President has the veto power in his hands. To be sure he has; but it is a power to be exercised, like the discretion of a court, in good faith, for proper purposes, in honest judgment and good conscience, and not persistently in the execution of a scheme which is in contravention of the just authority of the legislative branch of the Government. It was exercised, however, by the President for the purpose of preventing reconstruction by congressional agency and by authority of law.

Then came his interference by his message of the 22d of June, 1866, and by other acts, all disclosing and furthering a purpose to prevent the ratification of the pending constitutional amendment, a matter with which, as the Executive of the country, he had no concern whatever. The Constitution provides that the House and the Senate, by specified means, may propose amendments to the Constitution; and if any subject is wholly separated from executive authority or control it is this power to amend the Constitution of the United States. The Constitution reserves this power to Congress and to the people, excluding the President. In the same year he suspended the test-oath, against the advice of the Attorney General, and appointed men to office who, as he well knew, could not take that oath. The oath was prescribed for the purpose of protecting the country against the presence of disloyal persons in office—a measure necessary to the public safety. Can any act be more reprehensible? Can any act be more criminal? Can any act be more clearly within Blackstone's definition of "crimes and misdemeanors."

Then follows his surrender of abandoned lands. In 1865 we passed the first Freedmen's Bureau bill, in which we set apart the abandoned lands for the negroes and refugees of the South. In violation of law and without authority of law he has restored them to their former rebel owners. This class of property was of the value of many millions of money.

We had captured in the South vast amounts

of railway property. All these millions of property he has turned over to their former rebel proprietors. In many instances, as in the case of one railway, the Government itself, under his special direction and control, in the State of Tennessee constructed fifty-four miles of railway at an expense of more than two million dollars. This railway, with others, was turned over without consideration, without power to make reclamation or to obtain compensation, and all without authority of law.

We possessed a vast amount of rolling stock used on southern roads during the war, some of it captured from the enemy. The rolling stock captured he restored without money and without price. Other portions of it, constructed by the Government of the United States, or purchased of manufacturers or of railroad companies, he sold without authority of law to corporations that, according to the principles of law, were insolvent. When the time arrived for payment to the Government many of them neglected to comply with the conditions of sale. One of those corporations, the Nashville and Chattanooga railroad, Tennessee, made an exhibit by which it appeared they had money on hand to pay the Government what they owed it. The officers of the Government demanded payment, and threatened to take possession of the road in case of further neglect. President Johnson, by his simple order, and that, as far as is known, without consultation with any member of the Cabinet, authorized, or rather directed, a delay or postponement in the collection of this debt. Agreeably to a previous order which he had issued, the interest on the bonds guaranteed by the State of Tennessee to this road, which had been due three or four years, were then paid out of money which upon every principle of reason, equity, and law belonged to the Government. The money had been earned by the use of the rolling stock which the Government had furnished.

Mr. Johnson's order was in utter disregard of the great principle that of all creditors the Government is to be first paid. Under no circumstances does the law concede to the citizen the right of payment until the claim of the sovereign is satisfied.

One important fact in connection with this transaction is that the President himself was the holder of these Tennessee State bonds, issued for the benefit of this road, to the amount of either nineteen thousand or thirty thousand dollars; and that of that money, which upon the contract and by every principle of law was due to the United States, he received past interest for about four years. A small matter, you may say; a small matter the country may say; but in a public trust he had no right, in the first place, to make sale of this property; secondly, he had no right to postpone payment, and above all he had no right to delay payment for the purpose of receiving to himself that which belonged to the Government. Nor is it any excuse for him that there were other holders, whether loyal or rebel, who shared the benefits of this transaction.

Then there is connected with these proceedings other public acts, such as the appointment of provisional governors for North Carolina and the other nine States without any authority of law. Not only that, but he authorized the payment of salaries without authority of law. Not only that, he ordered payment from the War Department of those salaries, notwithstanding there had been no appropriation by law, and notwithstanding the Constitution of the United States says that no money shall be drawn from the Treasury but in consequence of an appropriation by law.

When you bring all these acts together; when you consider what he has said; when you consider what he has done; when you consider that he has appropriated the public property for the benefit of rebels; when you consider that in every public act, as far as we can learn, from May, 1865, to the present time, all has tended to this great result, the restoration of the rebels to power under and in the Government of the country; when you consider all these things, can there be any doubt as to his purpose, or doubt as to the criminality of his purpose and his responsibility under the Constitution?

It may not be possible, by specific charge, to arraign him for this great crime, but is he therefore to escape? These offenses which I have enumerated, which are impeachable—and I have enumerated but a part of them—are the acts, the individual acts, the subordinate crimes, the tributary offenses to the accomplishment of the great object which he had in view. But if, upon the body of the testimony, you are satisfied of his purpose, and if you are satisfied that these tributary offenses were committed as the means of enabling him to accomplish this great crime, will you hesitate to try him and convict him upon those charges of which he is manifestly guilty, even if they appear to be of inferior importance, knowing that they were in themselves misdemeanors, that they were tributary offenses, and that in this way, and in this way only, can you protect the State against the final consummation of his crime? We have not yet seen the end of this contest.

I am not disposed to enter into the region of prophecy, but we can understand the logic of propositions. The propositions which the President has laid down in his last message and elsewhere will lead to certain difficulty if they are acted upon. Whether they will be acted upon I cannot say. The first proposition is, that under some circumstances an act of Congress may be in his judgment so unconstitutional that he will violate the law and utterally disregard legislative authority. This is an assumption of power which strikes at the foundation of the Government. The Constitution authorizes Congress to pass bills. When they have been passed they are presented to the President for his approval or objection. If he objects to a bill, for constitutional or other reason, he returns it to the House in which it originated; and then and there his power over the subject is exhausted. If the House and Senate by a two-thirds vote pass a bill it becomes a law, and until it is repealed by

the same authority or annulled by the Supreme Court the President has but one duty, and that is to obey it; and no consideration or opinion of his as to its constitutionality will defend or protect him in any degree. The opposite doctrine is fraught with evils of the most alarming character to the country. If the President may refuse to execute or may violate a law because he thinks it unconstitutional in a certain particular, another President may disregard it for another reason; and thus the Government becomes not a Government of laws, but a Government of men. Every civil officer has the same right in this respect as the President. If the latter has the right to disregard a law because he thinks it unconstitutional the Secretary of the Treasury and every subordinate has the same right. Is that doctrine to prevail in this country?

But coupled with that declaration is another declaration, that the negroes of the South have no right whatever to vote. Our whole plan of reconstruction is based upon the doctrine that the loyal people of the South, black and white, are to vote. Now, while there is no evidence conclusively establishing the fact, it is still undoubtedly true that thousands and tens of thousands of white men in the States recently in rebellion have abstained from participation in the work of calling the conventions because they have been stimulated by the conduct of the President to believe that they will ultimately be able to secure governments from which the negro population will be excluded. What is our condition to-day? Governments are being set up in the ten States largely by the black people, and without the concurrence of the whites, that concurrence being refused, to a large extent, through the influence of the President. Are we to leave this officer, if we judge him to be guilty of high crimes and misdemeanors, in control of the Army and the Navy, with his declaration upon the record that under certain circumstances he will not execute the laws? He has the control of the Army. Do you not suppose that next November a single soldier at each polling place in the southern country, aided by the whites, could prevent the entire negro population from voting? And if it is for the interest of the President to do so have we any reason to anticipate a different course of conduct? At any rate, such is the logic of the propositions which he has presented to us. If that logic be followed, the next presidential election will be heralded by civil war, or the next inauguration of a President of the United States will be the occasion for the renewal of fratricidal strife.

Mr. Speaker, we are at present involved in financial difficulties. I see no way of escape while Mr. Johnson is President of the United States. I assent to much of what he has said in his message concerning the effects of the tenure-of-office act. From my experience in the internal revenue office I reach the conclusion that it is substantially impossible to collect the taxes while the tenure-of-office act is in force; and I have no doubt that whenever a new Administration is organized, of whatever party it may be, some of the essential provisions of that act will be changed. The reason, Mr. Speaker, of the present difficulty is due to the fact that the persons engaged in plundering the revenues of the country are more or less associated criminally with public officers. The character of those public officers can be substantially known in the internal revenue office and in the Treasury Department; but if the Secretary of the Treasury and the President before they can remove officers against whom probable cause exists are obliged to wait until they have evidence which will satisfy the Senate of their guilt the very process of waiting for that evidence to be procured exhausts the public revenues. There is but one way of overcoming this difficulty. When the President, the Secretary of the Treasury, and the Commissioner of Internal Revenue are in harmony, and the Commissioner is satisfied from the circumstances existing that an officer is in collusion with thieves, he can ask the President for the removal of that man; and then there should exist the power of removal by a stroke of the pen. Neither the official nor his friends should know the reason therefor. Nothing so inspires officials with zeal in the discharge of their duties as to feel that if they are derelict their commissions may at any moment be taken from them.

But what is our position to-day? Can this House and the Senate, with the knowledge that they have of the President's purposes and of the character of the men who surround him, give him the necessary power? Do they not feel that if he be allowed such power these places will be given to worse men? Hence I say that with Mr. Johnson in office from this time until the 4th of March, 1869, there is no remedy for these grievances. These are considerations only why we should not hesitate to do that which justice authorizes us to do if we believe that the President has been guilty of impeachable offenses.

Mr. Speaker, all rests here. To this House is given under the Constitution the sole power of impeachment; and this power of impeachment furnishes the only means by which we can secure the execution of the laws. And those of our fellow-citizens who desire the administration of the law ought to sustain this House while it executes that great law which is in its hands and which is nowhere else, while it performs a high and solemn duty resting upon it by which that man who has been the chief violator of law shall be removed, and without which there can be no execution of the law anywhere. Therefore the whole responsibility, whatever it may be, for the non-execution of the laws of the country is, in the presence of these great facts, upon this House. If this House believes that the President has executed the laws of the country, that he has obeyed the provision of the Constitution to take care that the laws be faithfully executed, then it is our duty to sustain him, to lift up his hands, to strengthen his arms; but if we believe, as upon this record I think we cannot do otherwise than believe, that he has disregarded that great injunction

of the Constitution to take care that the laws be faithfully executed, there is but one remedy. The remedy is with this House, and it is nowhere else. If we neglect or refuse to use our powers when the case arises demanding decisive action the Government ceases to be a Government of laws and becomes a Government of men.

But, sir, in conclusion, I am prepared to accept the judgment of this House as a patriotic judgment. I shall then wait for the teaching of events. I do not despair of a great people. They can endure trials. They can overcome obstacles. If we err, they, even through the suffering so caused, will assert finally the authority of justice and the majesty of law. Let nothing be done under the influence of passion, prejudice, or political excitement. But the vindication of the laws is a duty, and it often falls to the lot of a political party to perform it. My own convictions are clear. I see my country just emerging from civil war, distracted, torn, and bleeding; her people heavily taxed and the public revenues plundered; her currency depreciated; her credit impaired, so that in the markets of Europe she is associated with Austria, Turkey, and Spain. Millions of her people, but recently in rebellion, still bold, defiant, aggressive; and millions more loyal, dutiful, and hopeful, too, even when peril menaces, after two years of struggle, still without security, and all this, as I believe, in consequence of the doings and designs of the President of the United States. Can I hesitate; can I yield my judgment to circumstances which in the nature of the case must be temporary? I will not ask this House to do its duty; that would not be decorous in me. It will do its duty, and its duty will have been equally performed whether the results harmonize with my judgment or not.

But, sir, I may look beyond the present moment and assume that to be done which upon my judgment and conscience I think ought to be done.

Consider how all the affairs of the country would be changed and improved. Civil government would be restored speedily to ten States; the civil rights of all the people would be recognized and made secure; the loyal men would exercise the great privilege of self-government, safe in their own power and in the benign protection of the national Government; those recently in rebellion would soon be restored to all their political privileges; industry would be honored and well recompensed; production, consumption, and trade immensely developed; the revenues of the country collected; public plunder no longer fostered as an art; taxes diminished; the public credit so improved that the questions depending upon the value of our currency would be settled without disturbance or violent legislation; the Army reduced; and the power of the nation so augmented and everywhere respected as that a single ship-of-war would protect the commerce of the Mediterranean or of the Gulf of Mexico.

These things are not and cannot now be, because the President is not "clear in his high office," disregarding, as he does, the injunction of the Constitution upon him to "take care that the laws be faithfully executed."

So mighty is the machinery of the Government that the weight of the President's hand upon the central lever affects the fortune of every citizen. With $150,000,000 in the Treasury, and unlimited power to accumulate and to disburse, a nod of his head makes his friends prosper while his enemies perish. In the presence of this power, and surrounded as we are with evidence of the evil results of a policy which we have so long tolerated but never approved, are we to hesitate, to delay, to abandon the field in the hope that by other means and by other agencies the final redemption of the nation is to be secured?

Believing that Andrew Johnson is guilty of high crimes and misdemeanors I have assented to, and by the direction of a majority of the Committee on the Judiciary reported, a resolution for his impeachment. This resolution, upon my conscience and best judgment, I now support.

In contemplation of the law, and upon the facts, I believe him to be so guilty. And thereon I ask the judgment of the House.

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